

COMMISSION ON JUDICIAL PERFORMANCE
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JUDICIAL PERFORMANCE COMMISSION ISSUES
DECISION AND ORDER IMPOSING PUBLIC CENSURE OF
JUDGE JAMES M. PETRUCELLI

The Commission on Judicial Performance has issued a severe public censure of Judge James M. Petrucelli of the Fresno County Superior Court.

Judge Petrucelli engaged in serious misconduct by calling the Fresno County jail and ordering the own recognizance (OR) release of a person he knew socially, Jay Ghazal, based on his personal knowledge of Ghazal and information received through ex parte communications with Jonathan Netzer, an attorney who was a personal friend of both Ghazal and the judge. Ghazal had been arrested on spousal abuse charges, and his release violated Penal Code section 1270.1, which prohibits an OR release on such charges prior to a hearing in open court and notice to the prosecution. The judge also called a local defense attorney about representing the acquaintance. The commission determined that the judge violated multiple canons of the Code of Judicial Ethics and engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute (prejudicial misconduct). In concurrence with the special masters appointed to hear evidence in this proceeding, the commission concluded, "In the eyes of the public, Ghazal's OR release tends to reflect special treatment obtained as a result of personal connections between Ghazal, Netzer and Petrucelli, and thereby tends to diminish public confidence in the objectivity and impartiality of the judiciary."

The commission adopted the special masters' finding that Judge Petrucelli did not act in bad faith because he believed he was acting properly, in accordance with an established practice in Fresno County. His belief was based on his awareness that other judges in the past had ordered telephonic OR releases from jail upon an ex parte request from an attorney. A number of witnesses confirmed the existence of this practice.

While adopting the masters' finding that Judge Petrucelli believed he was acting properly, the commission nonetheless found the judge to have been exceedingly remiss in failing to inquire whether the practice he became aware of years earlier was still considered proper, whether it was ever considered proper in a matter in which the judge would otherwise be disqualified, and whether there had been any changes in the law that would prohibit such a release. The commission stated, "Such inquiries might have prevented the judge from going down the path that led to these proceedings and this censure."

Judge Petrucelli testified that he was not aware of Penal Code section 1270.1, which was enacted in 1999. When asked whether, as a judge, he had a duty to be knowledgeable about the

law, he testified, “Certainly that is my duty, but today as much as we do, I don’t know that I can keep up with or any judge can keep up on all of the changes and all of the different laws that we deal with.” The commission stated, “The public has a right to expect that judges keep abreast of changes in the law before taking judicial action, particularly changes that affect public safety.”

In aggravation, the judge failed to make independent inquiries concerning the facts and circumstances of the domestic abuse incident that led to Ghazal’s arrest and failed to determine if Ghazal had a history of domestic violence or criminal convictions before authorizing Ghazal’s release. The commission also considered Judge Petrucelli’s history of prior discipline: a public admonishment in 2007, and advisory letters in 2001 and 2002. For the most part, the prior discipline pertained to the judge’s courtroom demeanor and did not involve conduct similar to the misconduct in this matter.

In mitigation, the misconduct was an isolated incident, and there was no indication that Judge Petrucelli had engaged in a pattern of similar misconduct. Further, he acknowledged the impropriety and serious nature of his misconduct and immediately took responsibility when confronted by his presiding judge. The commission also considered in mitigation the testimony and stipulated declarations of numerous witnesses concerning Judge Petrucelli’s positive contributions to the workings of the court and his community.

The commission stated that the serious nature of the judge’s misconduct, conduct that reflects negatively on the impartiality and integrity of the judiciary, might warrant removal. However, after careful consideration of multiple factors discussed in its decision, and in deference to the masters’ finding that the judge acted in good faith, the commission determined to impose a severe censure, the most serious discipline that may be imposed on Judge Petrucelli short of removal.

Judge Petrucelli is represented by Attorney Kathleen M. Ewins and David S. McMonigle of Long & Levit LLP in San Francisco.

The commission’s Decision and Order of Public Censure is available on the commission’s website at <http://cjp.ca.gov> (under “Pending Cases - Press Releases & Documents” and “Public Discipline & Decisions”) and at the commission’s office.

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The commission is composed of three judges, two lawyers and six public members. The chairperson is Honorable Erica R. Yew of the Santa Clara County Superior Court. Commission member Anthony P. Capozzi, Esq. is recused in this matter.

For further information about the Commission on Judicial Performance, see the commission’s website at <http://cjp.ca.gov>.